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10/810,797	03/26/2004	Thomas J. Sisk	60,137-247	9772
26096 7590 02/20/2008 CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			EXAMINER NGUYEN, TUAN N	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

**FEB 19 2008**

**GROUP 3700**

Application Number: 10/810,797  
Filing Date: March 26, 2004  
Appellant(s): SISK, THOMAS J.

\_\_\_\_\_  
Todd W. Barrett  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/19/07 appealing from the Office action mailed 10/9/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,578,832	Primucci	4-1986
4,671,026	Wissinger	6-1987
6,677,020	Dron	1-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 7-9, 13, 14, 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Primucci.

In regard to claim 7, Primucci discloses a shower surround comprising a first surround section (the middle section) having an inner band section; a second surround section (the top section) comprising an outer band section; and a retainer assembly (34) mounted to the outer band section (see Fig. 5), the retainer assembly comprising a first frame arm (40) opposed to a second frame arm (42) and a stop (36) which extends from one the first frame arm and the second frame arm, the inner band section receivable against the stop and between the first frame arm and the second frame arm (see Fig. 5).

In regard to claim 8, the outer band comprises a stepped band section (where 10 is pointing in Fig. 5) displaced from a surround surface.

In regard to claim 9, the inner band comprises a rib extends therefrom (shelf 14 is considered as the rib as claimed).

In regard to claim 13, 14 and 16, the method as claimed would be inherent during normal assembly of the Primucci shower surround.

In regard to claims 21, since the retainer assembly is a gasket, it is inherent that a multiple of seals integrally mounted within the retainer assembly to receive the inner band.

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primucci in view of Dron or Wissinger.

The Primucci reference shown the entire gasket/retainer assembly, as discussed above, is made of sealing material; therefore, it fails to show a seal mounted to a stop. The examiner has cited the Dron and Wissinger on 7/17/06 to show a seal layer mounted another materially different layer to form one single assembly/part. Since parts (36, 40 and 42) of Primucci has a thickness, the outer half of that thickness can obviously be considered as the stop and arms as claimed and the inner half of that thickness can obviously be considered as the seals as claimed. It is hard to see since both halves are made from the same material; however, Dron and Wissinger are provided to provide a better explanation of the examiner's position. Therefore, the integral seal mounted to the stop to receive an end segment of the first inner band is generally L-shaped since the gasket/retainer assembly is an upside down U, wherein taking the section of 36 and a portion of the section 40 or 42 would result in an L-shaped. The integral seal would inherently include a first surface adjacent said stop and a second surface adjacent at least one of said first frame arm and said second frame arm.

#### **(10) Response to Argument**

With respect to the applicant's argument against the Primucci reference that the upper and lower blocks 20, 22 with a bolt 30 hold the shower sections together and that the gasket 34 is not designed to hold the shower section together, the examiner disagrees with the applicant interpretation of the Primucci reference in that the block 20

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is constructed as part of the upper shower section and the block 22 is constructed as part of the lower shower section, wherein the member 34 with the two arms 42 is inserted onto the lower section and then upper shower section is then come down and sit on member 34 and the back wall is leaned against the protruding portion 38 of member 34 (best illustrated in Figs. 4 and 5). Before the bolt 30 permanently fastened the upper and lower shower sections together, it can be seen that the downward angle between blocks 20 and 22 would tend to push the upper the upper shower section backward and out of alignment with the lower shower section; however, this action is being stop by the protruding portion 38 of member 34, which hold the upper shower section in alignment with the lower shower section before the bolt 30 permanently clamp the shower sections together. In this instant, member 34 is being served as both a retainer and a sealer. Furthermore, the applicant's argument with respect to claim 9 is narrower than what is being claimed therein. The applicant's argument with respect to claim 21 has been arrest above where member 34 is being served as both a retainer and a sealer in this interpretation.

With respect to the applicant's argument against the combination of references that a person of ordinary skill in the art would not combine seal members to a gasket that is already a seal and that there is no benefit to mounting a seal to a gasket that is also a seal, the examiner would like to point out that the utilization of the Dron or Wissinger reference is for the teaching of today technology can formed a seal by integrating multiple different layer of materials or of the same material. Since the retainer and seal member 34 is made from the same material, viewing the thickness of

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member 34 as layers in reference to the Dron and Wissinger documents would obviously yield the limitations of claims 22-24.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tuan Nguyen/



Primary Examiner, Art Unit 3751

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Gregory Huson



Robin Evans

